



CNR: KAHC010091462019

NC: 2026:KHC:48736
MFA No. 2727 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO. 2727 OF 2019 (CPC)

BETWEEN:

1. SMT. ASHWATHAMMA
SINCE DEAD BY LRS.

MALLIKARJUNASWAMY (DIED ON 05.10.2022)

1(a)1 SMT.MAMATHA
W/O LATE MALLIKARJUNASWAMY
AGED ABOUT 50 YEARS

1(a)2 SRI.GANESH.M
S/O LATE MALLIKARJUNASWAMY
AGED ABOUT 29 YEARS

1(a)3 SMT.PALLAVI
D/O LATE MALLIKARJUNASWAMY
AGED ABOUT 27 YEARS

1(b) SRI.BASAVARAJU.A.V
W/O.ASHWATHAMMA
AGED ABOUT 50 YEARS

1(c) SRI.VASUDEVAN.A.V.
S/O ASHWATHAMMA
AGED ABOUT 49 YEARS

1(d) PARIMALA.A.V
D/O ASHWATHAMMA
AGED ABOUT 44 YEARS
ALL ARE R/AT ARUDI VILLAGE,
SASALU HOBLI,


Digitally signed
by
GAVRIBIDANUR
SUBRAMANYA
GUPTA
SREENATH
Location: HIGH
COURT OF
KARNATAKA



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DODDABALLAPURA TALUK,
BENGALURU RURAL DISTRICT - 561 204.

... APPELLANTS

(BY SRI.V.VISWANATH SHETTY., ADVOCATE)

AND:

1. SRI. A. S. SHIVAPRASAD
S/O A.V.SIDDAPPA,
AGED ABOUT 45 YEARS,
RESIDING AT OPPOSITE TO COURT,
ROJIPURA, 4TH WARD,
DODDABALLAPURA TOWN
BENGALURU RURAL DISTRICT - 561 203.
2. SRI. HANUMANTHARAJU
S/O LATE LAKSHMINARASIAH,
AGED ABOUT 54 YEARS,
3. SMT. ANASUYAMMA
D/O LATE LAKSHMINARASIAH,
AGED ABOUT 52 YEARS,
4. PARAVATHAMMA
S/O LATE LAKSHMINARASIAH,
AGED ABOUT 50 YEARS,
5. SMT. ANITHA
S/O LATE LAKSHMINARASIAH,
AGED ABOUT 50 YEARS,
6. SMT. THIPPAKKA
S/O LATE LAKSHMINARASIAH,
AGED ABOUT 44 YEARS,
7. SRI. CHANDRASHEKAR
S/O LATE LAKSHMINARASIAH,
AGED ABOUT 43 YEARS,
RESPONDENT NO.2 TO 7 ARE
RESIDING AT ARUDI VILLAGE,
SOSALU HOBLI,



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DODDABALLAPURA TALUK - 561 204.

8. RAVI KUMAR.M
S/O MALLARAJAPPA,
AGED ABOUT 44 YEARS,
RESIDING AT VADDARAPALYA,
DODDABALLPURA TALUK,
MALLATHAHALLI,
BANGALORE RURAL - 561203
9. G.N.RAMANJINAPPA
C/O NARAYANA SWAMY.A
RESIDING NO.67,
GANDARAJAPURA,
GANTIGANAHALLI,
DODDABALLAPUR TALUK,
BANGALORE RURAL - 561205

...RESPONDENTS

(BY SRI. NAGARAJA S.,ADVOCATE FOR R1)
(BY MS.HEENA.S.A FOR SRI.S.ISMAIL ZABIULLA FOR R8 AND R9)

THIS MFA IS FILED U/O 43 RULE 1(t) R/W SECTION 151 OF CPC, AGAINST THE ORDER DATED 22.02.2019 PASSED IN MISC.NO.10013/2014 ON THE FILE OF THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE, DODDABALLAPURA, BENGALURU RURAL DISTRICT, DISMISSING THE PETITION FILED UNDER ORDER 39 RULE 19 OF CPC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR



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ORAL JUDGMENT

This appeal is preferred by the appellant, who was the petitioner in Mis.P.No.10013/2014, appellant in R.A.No.10011/2013 and defendant No.2 in O.S.511/2007.

2. The respondent No.1 is the respondent No.1 before the Miscellaneous Court and the plaintiff before the Original Suit proceedings. The other respondents are respondents in the Miscellaneous Petition.

3. Respondent Nos.8 and 9 are impleaded before this Court as they are subsequent purchasers from the original plaintiff, who is the respondent No.1 herein.

4. Parties shall be referred to as plaintiffs and defendants for the sake of brevity. Respondent Nos.8 and 9 shall be referred to as subsequent purchasers. Notice to respondent Nos.2 to 7 is not ordered, as there is no relief sought against them and they have neither challenged the judgment of the trial Court in O.S.No.511/2007.

5. The brief facts of the case are as follows:



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The original suit proceedings came to be filed by the plaintiff. The said suit was filed against the defendants Nos.1 and 2 for the relief of declaration of ownership. The said suit came to be decreed by the judgment and decree dated 25.04.2013. Aggrieved by the judgment and decree dated 25.04.2013 of the original suit proceedings, the defendant No.2 namely Smt. Ashwthamma, preferred a regular appeal in R.A.No.10011/2013 on 08.08.2013. In the said regular appeal, notice was served to the plaintiff and other defendants. The matter was thereafter listed for conducting enquiry on the application I.A.No.1, which was filed under Section 5 of the Limitation Act, 1963 for condonation the delay in filing the appeal.

6. In view of the absence of the defendant No.2-Smt. Ashwthamma (appellant No.1 in R.A.No.10011/2013) and for non-representation by the appellant before the Appellate Court in R.A.No.10011/2013, the appeal came to be dismissed vide order dated 22.09.2014. Aggrieved by the dismissal of the appeal in R.A.No.10011/2013, the defendant No.2-Smt. Ashwthamma preferred a Miscellaneous petition in



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Mis.P.No.10013/2014 and the Miscellaneous Court had set aside the order of dismissal in R.A.No.10011/2013, for non-prosecution by the defendant No.2-Smt. Ashwthamma, appellant No.1 therein. The said Miscellaneous Petition in Mis.P.No.10013/2014, upon hearing the counsel for both parties, the Miscellaneous Court did not find favour with the defendant No.2-Smt. Ashwthamma, petitioner therein and had dismissed the petition on 22.02.2019 by holding that no materials were placed before the Miscellaneous Court to show any cogent reason for non-appearance of the appellant No.1, defendant No.2-Smt. Ashwthamma and for non-prosecution of the regular appeal.

7. It was also held by the Miscellaneous Court that the defendant No.2-Smt. Ashwthamma had not even filed an application for condonation of delay in filing the petition. On these grounds, the Miscellaneous petition came to be dismissed.

8. Aggrieved by the same, present appeal is filed by the original defendant No.2-Smt. Ashwthamma.



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9. During the pendency of this appeal, the original defendant No.2-Smt. Ashwthamma, appellant herein died and her legal representatives were brought on record. It is also seen that during the pendency of this appeal the respondents Nos.8 and 9 have been impleaded, who claim to have purchased the suit schedule property from the respondent No.1-original plaintiff on 08.10.2024.

10. The contentions of the learned counsel appearing for the appellants are that the impugned order passed by the learned trial Court dismissing the Miscellaneous Petition in Mis.P.No.10013/2014, on the ground that no proper reasons are forthcoming, no materials placed on record and also holding that no application was filed before the Appellate Court in R.A.No.10011/2013 with respect to condonation of delay, is illegal, perverse and arbitrary, and the same requires to be set aside by providing an opportunity to the appellant herein to contest the regular appeal.

11. It is further contented that no documents were placed before the Appellate Court with regard to the ill-health. But an affidavit was sworn to by the original defendant No.2-Smt.



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Ashwthamma, appellant herein regarding the ill-health and non appearance before the Appellate Court was due to *bonafide* reasons. It is also contented by the learned counsel for appellant that the Miscellaneous petition came to be filed within 30 days as contemplated under law and the finding arrived at by the Miscellaneous Court, with regard to application for condonation of delay not being filed by the appellant in the regular appeal is not correct. As the Order sheet itself reflects that I.A.No.1, was filed under Section 5 of the Limitation Act for condonation of delay, which has not been adverted to and ignored by the Miscellaneous Court and a mechanical order has been passed dismissing the Miscellaneous petition on the ground of there being no application for condonation of delay having filed and therefore the appeal itself would fall flat on the ground.

12. Therefore, he contends that an opportunity be given to the appellants herein to contest the regular appeal on merits by putting to any terms for expedient disposal of the appeal.

13. *Per contra*, learned counsel appearing for the respondent No.1, vehemently contends that there is no



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illegality or perversity in the impugned order passed by the learned trial Judge by dismissing the Miscellaneous Petition, as no material admittedly has been placed on record by the appellant to show any *bonafide* cogent reasons to the satisfaction of the Court for non-appearance or for that matter the appellant suffering from any illness. Therefore, the trial Court, having found no materials placed on record, has rightly dismissed the appeal.

14. However, he admits and agrees to the fact that before the Regular Appeal Court, there was an application filed for condonation of delay of 117 days delay, in application I.A.No.1. Therefore, learned counsel contends that when no materials are placed by the appellant to the satisfaction of the Court to show sufficient cause for setting aside the order of dismissal for non-appearance, the trial court has rightly dismissed the Miscellaneous petition, which does not call for interference. Hence, he seeks dismissal of this appeal.

15. Learned counsel appearing for respondent Nos.8 and 9 before this court, contends that they have purchased the suit scheduled property from the respondent No.1-original plaintiff



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in the year 2024 and they have become the absolute owners of the suit schedule property. She submits that they would be affected by the order, if any, passed in favour of the appellant herein, as they have not made parties before the Appellate Court. The suit was rightly decreed in favour of the plaintiff upon the appellant having contested the matter tooth and nail. Therefore, she also seeks for dismissal of the appeal, as there being no good or cogent reason made out to allow the appeal.

16. Having heard learned counsel for the appellants and learned counsel for the respondents, the point that arises for consideration is:

"Whether the impugned order passed by the learned trial Court judge in Mis.P.No.10013/2014, deserves interference? If so, what order?"

17. There is no dispute to the fact that original suit was filed in O.S.No.511/2007 by the plaintiff therein against the two defendants. The suit came to be decreed upon contest. Evidence was adduced, all contentions were appreciated, and the trial Court had decreed the suit. It is also not in dispute that defendant No.2, aggrieved by the judgment and decree of



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the suit, challenged the same before the Appellate Court in R.A.No.10011/2013. In the said regular appeal, an application came to be filed for condonation of delay, which was not prosecuted and there was no appearance of the appellant No.1, who is original defendant No.2, and the appeal came to be dismissed on 22.09.2015.

18. It is also not in dispute that upon the dismissal of the regular appeal in R.A.No.10011/2013, the defendant No.2- Smt.Ashwthamma, preferred a miscellaneous petition in Mis.P.No.10013/2014. In the said miscellaneous petition, the respondent No.1/plaintiff was served, and no statement was filed. Upon contest, in the Miscellaneous petition, the Court dismissed the petition on the ground that no sufficient cause, bona fide reasons were made out by the original defendant No.2, who is the petitioner in miscellaneous petition, to show the non-appearance before the regular appeal Court and so also, no documents were produced to show the power of attorney holder suffering from illness. No materials were produced to that effect. The miscellaneous Court also came to the conclusion that no application for condonation of delay was



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also filed in the regular appeal Court. Therefore, the question of leading evidence by the original defendant No.2/appellant was not required. It was on these grounds that the miscellaneous petition came to be dismissed by holding that it is a discretion of the appellate Court to restore the appeal or not, as the appellant had withheld the necessary crucial document to show the illness or suffering due to which there was no appearance before the regular appellate Court.

19. It is relevant to note here that an application was filed by way of a miscellaneous petition wherein the original defendant No.2/appellant has clearly stated that due to bonafide reasons of ill health and suffering by the power of attorney holder due to the old age and illness of the original defendant No.2/appellant, the power of attorney holder could not appear before the Court and lead evidence in the first appeal. Therefore, it was a bona fide mistake and not a deliberate one, and the miscellaneous petition was filed well within the period of limitation, within 30 days from the date of dismissal of the regular appeal. All these aspects have not been taken into consideration by the learned miscellaneous Court, in



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allowing the petition and providing an opportunity to the original defendant No.2 to contest the regular appeal on merits.

20. It is seen that the miscellaneous Court has come to the wrong conclusion that there was no application filed before the regular appeal Court with regard to condonation of delay, whereas the order sheet reflects that an application for condonation of delay in IA.No.1 was filed which was not taken into consideration and in fact was one of the reasons for dismissing the miscellaneous petition.

21. Where a miscellaneous petition is filed seeking to set aside the order of dismissal on the ground of non-prosecution, the Court would have to take a lenient, pragmatic approach rather than a hyper-technical approach of dismissal of the petition without providing an opportunity. The Court should lean in favour of the petitioner/appellant who seeks restoration of the petition for non-prosecution unless there is any inordinate delay, which is huge and humongous, which cannot be condoned. In the present case on hand there is no such inordinate delay in filing a miscellaneous petition, as the petition is filed well within the time of limitation under 30 days



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of dismissal of the regular appeal. Therefore, the Miscellaneous Court ought to have taken a pragmatic approach on the lenient view in allowing the petition by imposing certain costs to compensate the respondent/plaintiff. Having not done so, this Court is inclined to show indulgence in the matter by allowing the appeal. Accordingly, I pass the following order.

ORDER

- 1) The appeal is ***allowed***.
- 2) The impugned order dated 22.02.2019 passed in the Miscellaneous Petition No.10013/2014 by the 4th Additional District and Sessions Judge, Doddaballapura, Bengaluru Rural District, is hereby set aside. The Miscellaneous petition stands allowed.
- 3) Consequently, the regular Appeal No.10011/2013 dismissing the appeal for non-prosecution by the 4th Additional District and Sessions Judge is hereby recalled and restored to its file.



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- 4) The regular appeal Court shall decide the matter in accordance with law by providing an opportunity to the appellants and also to the respondents.
- 5) In view of the fact that respondent Nos.8 and 9 have been impleaded before this Court on the ground that they are subsequent purchasers from the respondent No.1/original plaintiff, they shall be made parties before the regular appeal court and permitted to contest the same by providing an opportunity to them. Accordingly, this appeal is allowed subject to the deposit of cost by the appellants to an extent of Rs.25,000/- to be paid by the appellants to the respondents before the trial Court, which shall be a condition precedent to proceed further in the matter.
- 6) In view of the fact that the regular appeal is of the year 2013, the first appellate Court



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shall decide the appeal within a period of eight months from the date of receipt of copy of this order and may also impose costs on the party seeking unnecessary adjournments. All parties to co-operate with the regular appeal Court.

- 7) It is made clear that this Court has not expressed any opinion on the merits of the matter. The first appellate court shall provide suitable opportunities to the appellants as well as to the respondents.

**Sd/-
(PRADEEP SINGH YERUR)
JUDGE**

RL - PARAGRAPHS 1 TO 17
RCK - PARAGRAPHS 18 TO END
List No.: 1 SI No.: 21